Indiana R. Co. v. *Maurer,* 160 Ind. 25; *Battis* v. *Chicago R. I. & P. R. Co.,* 124 Iowa 623; *Beath* v. *Rapid R. Co.,* 119 Mich. 512; *Tex. C. R. Co.* v. *Wheeler* (Tex. Civ. App.) 116 S. W. 83; *Duffy* v. *Consol C. Co.,* (Ia.) 124 N. W. 609. Conceding the general rule to be as stated, still upon principle, such exclamations should not be received if they are made so long after the original source of injury that there is any appreciable danger that their utterance was not entirely an involuntary expression of present suffering, but rather one prompted to a considerable degree by politic and self-seeking considerations. See WIGMORE EVID. §§ 1718, 1719. Keeping in mind this fundamental prerequisite of their admissibility it would seem that the court in the principal case pushed the rule admitting such exclamations and declarations to its fullest extent, if not to a point to which it would be unsafe to go in all cases. Some courts expressly reject exclamations of pain and suffering made a considerable period of time after the original injury. *Olp* v. *Gardner,* 48 Hun 169; *Barelle* v. *Pa. R. Co.,* 51 Hun 540; *Ryan Porter Mfg. Co.,* 57 Hun 253; *Gulf C. & S. F. R. Co.* v. *Ross,* 11 Tex. Civ. App. 201; *Kelly* v. *Detroit L. & N. R. Co.,* 80 Mich. 237; *Lake St. El. R. Co.* v. *Shaw,* 203 Ill. 39; *Union Pac. R. Co.* v. *Hammerlund,* 70 Kan. 888; *Klingman* v. *Fisk & Hunter Co.,* 19 S. D. 139; *Donohue* v. *Brooklyn I. C. & S. R. R. Co.,* 65 N. Y. Supp. 634, 53 App. Div. 348. Still other courts reject such subsequent exclamations only when made after suit for the injury has been commenced, or when made to persons with the evident purpose of qualifying them as witnesses in contemplated litigation. *Mott* v. *Detroit G. H. & M. R. Co.,* 120 Mich. 127; *Chicago & E. I. R. Co.* v. *Donworth,* 203 Ill. 192; *Dorrigan* v. *R. Co.,* 52 Conn. 291; *Grand Rapids & I. R. Co.* v. *Huntley,* 38 Mich. 537; *Laughlin* v. *R. Co.,* 80 Mich. 154. Some states, notably New York, exclude all statements of pain and suffering unless made to a physician for purpose of receiving medical treatment. See, *Chicago St. R. Co.* v. *Kennely,* 170 Ill. 508; *Reed* v. *R. R.,* 45 N. Y. 578; *Roche* v. *R. R.,* 105 N. Y. 294, and see also WIGMORE EVID., pp. 2210-2211 for other cases and criticisms of this exception.

FIRE INSURANCE—WAIVER OF CONDITIONS BY AGENT.—A fire insurance policy issued to plaintiff stated that the policy would be void, if the interest of the insured were other than "sole and unconditional ownership," also that no agent had power to waive any condition unless such waiver was attached to the policy. Plaintiff informed the agent that he held under a mortgage foreclosure certificate but the agent failed to record the same. In an action on the policy, *held,* that the company was liable. *Leisen* v. *St. Paul Fire & Marine Ins. Co.* (1910), — N. D. —, 127 N. W. 837.

This decision, in accord with the weight of authority, is interesting chiefly because of the fact that it marks the repudiation by another state of the doctrine of the U. S. supreme court as laid down in *Northern Assur. Co.* v. *Grand View Bldg. Ass'n.,* 183 U. S. 308, reaffirmed in *Penman* v. *St. Paul Ins. Co.,* 216 U. S. 311, 30 Sup. Ct. 312. The court in the present case expressly rejects so much of its former decisions as are in accord with the supreme court. For an exhaustive treatment of this question see 3 COOLEY, BRIEFS OF LAW OF INSURANCE, pp. 2459-2658; VANCE, INSURANCE, pp. 355-

385; MAY, INSURANCE, Ed. 4, Chap. VII, 8 MICH. L. REV. 664. Late cases upholding the doctrine of the principal case are *Athens Mut. Ins. Co.* v. *O'Keefe* (Ga. 1910), 66 S. E. 1093; *London Guaranty Co.* v. *Miss. Central Ry.* (Miss.), 52 South. 787; *Hulen* v. *Ins. Co.*, 80 Kan. 127, 102 Pac. 52; *Miller* v. *Prussian Ins. Co.*, 158 Mich. 402, 122 N. W. 1093; *Staats* v. *Pioneer Ins. Ass'n.*, (Wash.), 104 Pac. 185; *Wisotzky* v. *Niagara Ins. Co.*, 189 N. Y. 532, 82 N. E. 1134. Contra: *Crook* v. *N. Y. Life Ins. Co.*, 112 Md. 268; *McElroy* v. *Metropolitan Life*, 84 Neb. 866, 122 N. W. 27; *Athens Mutual Ins. Co.* v. *Evans*, 132 Ga. 703, 64 S. E. 993; *Sullivan* v. *Mercantile Mut. Co.*, 20 Okl. 460, 94 Pac. 676; *Russell* v. *Prudential Ins. Co.*, 176 N. Y. 178; *Kyte* v. *Corn. Ass'n. Co.*, 144 Mass. 43, 10 N. E. 518; *Parker* v. *Rochester Ger. Ins. Co.*, 16 Mass. 410, 39 N. E. 179.

HUSBAND AND WIFE—RIGHT OF WIFE TO SUE FOR ALIENATION OF HUSBAND'S AFFECTIONS.—Plaintiff and defendant were married women living apart from their husbands, undivorced. Plaintiff sued defendant for alienation of her husband's affections, predicating her right to sue upon two different statutes, one permitting a married woman living apart from her husband to sue and be sued alone in tort actions, the other allowing a married woman to prosecute and defend suits for the preservation or protection of her property as if unmarried. Demurrer. (1) No remedy at common law or by statute. (2) Non-joinder of husbands. *Held*, (1) that at common law a married woman had a *right of action* for this tort, but that inability to sue without joinder of her husband (who was not permitted thus to profit by his own wrong) barred her remedy; and that under either statute plaintiff could recover; (2) that the husbands need not be joined. *Eliason* v. *Draper* (1910), — Del. —, 77 Atl. 572.

Only three jurisdictions now hold that the wife has no remedy for this wrong. *Doe* v. *Roe*, 82 Me. 503, 20 Atl. 83, 8 L. R. A. 833, 17 Am. St. Rep. 499; *Lonstorf* v. *Lonstorf*, 118 Wis. 159, 95 N. W. 961; *Lellis* v. *Lambert*, 24 Ont. App. 653. New Jersey recently repudiated the doctrine. *Sims* v. *Sims* (1910), — N. J. L. —, 76 Atl. 1063. And in Wisconsin it has been held that if two or more effect the alienation the wife may recover substantially the same damages from them in a common law action for conspiracy. *Randall* v. *Lonstorf*, 126 Wis. 147; *White* v. *White*, 132 Wis. 121. Most courts now hold that the *right* existed at common law, (though there seems to have been no direct holding to that effect in the common law courts. *Lynch* v. *Knight*, 9 H. L. Cas. 577) and that the wife now may sue, either by virtue of judicial decision, *Foot* v. *Card*, 58 Conn. 1, 18 Atl. 1027, 6 L. R. A. 829, 18 Am. St. Rep. 258, or under a statute giving a married woman remedy for torts against her, *Sims* v. *Sims*, supra; or to preserve her property rights, *Bennett* v. *Bennett*, 116 N. Y. 584, 58 N. E. 249, 52 L. R. A. 630, and cases cited; or removing her disabilities more generally, *Nolin* v. *Pearson*, 191 Mass. 283, 77 N. E. 890, 4 L. R. A. (N. S.) 643 and note; *Keen* v. *Keen*, 49 Ore. 362, 90 Pac. 147, 10 L. R. A. (N. S.) 504. And the right to maintain the action has been sustained under such a statute, though the sum recovered might become community property. *Humphrey* v. *Pope*, 122 Cal. 253, 54